

1 JUDGE SIPPEL: What does the Bureau have to say
2 about that? I'm not so sure. I'm into this question of
3 party status in another HDO that I'm reluctant to rule
4 quickly on that because as a general proposition you can't
5 touch an HDO. The Commission can, of course, even if it's
6 a -- but have you talked to the -- can you shed any light on
7 this?

8 MR. WEBER: Yeah, I think Mr. Holt is correct, Your
9 Honor. When the HDO was referring to Cablevision, two of
10 the captioned applications refer directly to paths that
11 Cablevision had opposed. One in I believe the Bronx and the
12 other in New Jersey. And the Cablevision of Hudson Valley
13 is the New Jersey path which I think is the file number
14 713300. If I'm incorrect, Mr. Holt, correct me.

15 MR. HOLT: 713300, correct.

16 MR. WEBER: Right.

17 JUDGE SIPPEL: 7133000?

18 MR. WEBER: Right.

19 JUDGE SIPPEL: Second from the bottom?

20 MR. WEBER: Second from the bottom. There's an
21 application filed by Liberty for a path in New Jersey which
22 has been opposed by Cablevision of Hudson Valley. And my
23 understanding is just when the HDO is referring to
24 Cablevision, it meant to cover both Cablevisions. However,
25 it did refer specifically to Cablevision of New York City -

1 Phase I. And for that reason I think Mr. Holt is correct,
2 that it is an inadvertent omission from the HDO. And
3 regardless, Cablevision of Hudson Valley is a party in
4 interest. And if you don't want to rewrite the HDO or
5 anything, I think they should be allowed to intervene as a
6 party in interest.

7 MR. HOLT: Yes, Your Honor. We're not asking that
8 you modify the HDO. We're simply asking that you exercise
9 your discretion to make Cablevision of Hudson County, Inc.
10 party to the proceeding under 1.223 of the Commission's
11 rules.

12 JUDGE SIPPEL: Okay. How does -- let me ask how
13 does Liberty feel about that?

14 MR. BEGLEITER: Let me explain something to Your
15 Honor that will go to the -- of the case. The infractions
16 that Liberty are accused of committing all relate to what
17 happens in Manhattan. Cablevision takes the position or
18 took the position in its submissions.

19 Even though it was not a direct competitor of
20 Liberty in Manhattan, there was some derivative interest
21 that Cablevision of New Jersey had which somehow gave it
22 standing. We think that this a particularly weak argument,
23 an argument taken to conclusion could mean that if Time
24 Warner, for example, was having some sort of licensing
25 problem in Oregon that we could sit in because Time Warner

1 might get some profit from Oregon which could be used
2 against us in Manhattan.

3 So we have a position that objects to the New
4 Jersey and perhaps the Bronx also because there is no Bronx
5 Nexus either. So we are opposed to Cablevision of Hudson
6 County. We are also opposed to Cablevision of Phase I, but
7 we understand we cannot make that objection to the Court.

8 MR. WEBER: The Bureau must take exception to that
9 prior argument that all 15 captioned applications here, all
10 are ones that relate specifically to violations that the
11 Commission had found. The one we're speaking of here, the
12 one in New Jersey, the path 7, the 13300. If you notice on
13 Appendix B in the HDO it shows that we have found that there
14 has been an unauthorized hard wire interconnection between
15 non commonly owned buildings in violation of the
16 Communications Act. And that is the reason that particular
17 application was included with the HDO. So all the
18 violations herein are not Manhattan violations, that indeed
19 there is the one New Jersey violation and the one violation
20 in the Bronx as well.

21 JUDGE SIPPEL: Well, this says on Appendix B it's
22 under that application number. It's a Lincoln Harbor Yacht
23 Club, Harbor Boulevard. Where is that located? And then
24 it's under the column, receiver location, New York City.

25 MR. BEGLEITER: Yeah, I accepted that, Your Honor.

1 I don't know where Harbor Boulevard is. And I don't see
2 anything -- I know the Bronx. I don't see anything in the
3 Bronx, but maybe I'll double check that. I assumed when
4 they said New York City they meant New York City which could
5 include the Bronx. But I don't know where Lincoln Harbor
6 Yacht Club is. I'll double check.

7 MR. WEBER: The one in the Bronx may be one of the
8 premature operation ones which are listed in Appendix A.

9 JUDGE SIPPEL: I'm reluctant to move definitively
10 on this from the bench this morning.

11 MR. HOLT: Your Honor, perhaps it would be clear if
12 we were to file a formal motion to intervene which lays out.
13 The bottom line is that the HDO specifies for hearing
14 applications that were the subject of petition to deny filed
15 by Cablevision of Hudson County, Inc. An argument was made
16 in those pleadings regarding the issue of standing and
17 Cablevision of Hudson County, Inc. did show not only a
18 standing in response to Liberty's objection, but also the
19 relevancy of the factual information that came to light in
20 Liberty's application. So if you're not prepared to rule
21 from the bench on the issue, then we can file a formal
22 motion whichever you'd prefer.

23 JUDGE SIPPEL: Well, let me ask this. Well, I'm
24 not going to rule from the bench. This is -- but let me ask
25 this question. You're here -- who are you here representing

1 again? I mean, I want to focus a little more carefully on
2 this now.

3 MR. HOLT: The hearing designation order added
4 Cablevision of New York City - Phase I as a party to the
5 proceeding subject to the notice requirements of 1.221.

6 JUDGE SIPPEL: Well, who'd you file when you filed
7 your notice of appearance?

8 MR. HOLT: I filed on behalf of both entities.

9 JUDGE SIPPEL: Which are both? Say that they are.

10 MR. HOLT: Cablevision of New York City - Phase I
11 and Cablevision of Hudson County, Inc.

12 JUDGE SIPPEL: All right. I've heard the term
13 Hudson County and Hudson Valley. Which are we talking --

14 MR. HOLT: Hudson County.

15 JUDGE SIPPEL: There's no Hudson Valley.

16 MR. HOLT: No, Your Honor.

17 JUDGE SIPPEL: There's no Hudson Valley as a party.

18 MR. HOLT: Right.

19 JUDGE SIPPEL: Okay. So you filed a notice of
20 appearance on behalf of Hudson County, Inc.

21 MR. HOLT: I did indeed, Your Honor, with the
22 expectation that I would move orally this morning to add
23 Cablevision of Hudson County, Inc. as a party to the
24 proceeding in view of the fact that there appeared to have
25 been an inadvertent error made in the HDO which left that

1 entity out.

2 JUDGE SIPPEL: Was there, let me ask this question.
3 Is there a common interest? Is there a common ownership?

4 MR. HOLT: Common ownership, Your Honor, yes.

5 JUDGE SIPPEL: So their interests are being
6 represented.

7 MR. HOLT: If -- I would imagine so, Your Honor.

8 JUDGE SIPPEL: It sounds to me it's much ado about
9 nothing.

10 MR. HOLT: I suppose then I would -- if Your
11 Honor's view is that Cablevision's interests are represented
12 fully by the involvement of Cablevision of New York City -
13 Phase I, then I would agree, Your Honor. I suppose the
14 concern arose from the possibility that Liberty might object
15 to Cablevision seeking a fax regarding the New
16 Jersey -- Liberty's New Jersey operations. But to the
17 extent Your Honor doesn't feel that that's a problem, then
18 we don't need to make Cablevision of Hudson County, Inc. a
19 party.

20 JUDGE SIPPEL: That's where I'm coming out on this.
21 Do you feel any different about that, Bureau?

22 MR. WEBER: We believe that Cablevision Phase I
23 could certainly represent both sides. However, I understand
24 Mr. Holt's concerns that if they filed proposed findings
25 relating to the New Jersey path, they just want to be sure

1 that there's no objection raised because the carrier in the
2 Bronx is opposing a path in New Jersey.

3 MR. BEGLEITER: The FCC is opposing a path in New
4 Jersey.

5 MR. WEBER: At this point the FCC is opposing
6 nothing.

7 MR. BEGLEITER: Oh.

8 MR. WEBER: I mean, we are not advocates saying
9 that Liberty is unqualified. We are here to get the facts
10 and our proposed findings will follow the way the facts lie.
11 And at this point, we're not here to make a case against
12 Liberty or to make a case for Liberty.

13 JUDGE SIPPEL: I'm just, I think I'm going to go
14 back to where I was before. I'm just not sure. I don't
15 think I have enough information here. I have two doubts. I
16 have a doubt first of all whether I have the authority to
17 change the hearing designation or party. Unless there was a
18 stipulation. But that's not going to happen. And secondly,
19 well, I take that back. Under the rules that you're citing,
20 under the motion procedure, I could rule that they were a
21 necessary party and bring them in.

22 MR. HOLT: Yes, Your Honor.

23 JUDGE SIPPEL: So the other avenue would be to
24 certify it back up to the Commission. And since they're
25 interested, being represented here by you, it wouldn't delay

1 the proceeding. That's what my big concern was. I don't
2 want to get this thing in a situation where we've got a
3 person certified that's going to hold things up.

4 MR. HOLT: Your Honor, in raising this motion I had
5 understood that this would be a relatively simple procedural
6 matter. It appears to have taken on a life of its own. If
7 you don't feel comfortable ruling on the facts as I
8 presented them, then we can certainly file a formal motion.

9 JUDGE SIPPEL: Yeah, I'm going to require that you
10 do that. I mean. I understand everything that you're
11 saying. Don't get me wrong. You're making it very clear.
12 The issue I understand completely. But I do have the factor
13 that Liberty is opposing it, number one, which immediately
14 raises a concern. They should have an opportunity to
15 address whatever it is that you're saying. And we're going
16 to do this, let's do it right, okay? So you can within the
17 next five days file a motion?

18 MR. HOLT: I'll do my best to meet that deadline.

19 JUDGE SIPPEL: Is that too short? All right. You
20 file a motion. But we're not going to slow things down on
21 that motion.

22 MR. HOLT: I understand, Your Honor.

23 JUDGE SIPPEL: You file your motion as soon as
24 you're, certainly within the next ten days.

25 MR. HOLT: Thank you.

1 MR. BEGLEITER: Your Honor, if I may, if Lincoln
2 Harbor Yacht Club is in New Jersey --

3 JUDGE SIPPEL: I'm sorry, what did you say?

4 MR. BEGLEITER: I don't know. I mean, it's the
5 only one here that could be within New Jersey. The other
6 ones are all obviously Manhattan addresses except one on
7 Appendix A which I believe is either a Manhattan or perhaps
8 a Bronx address. I don't see anything in Appendix A that
9 looks anything like New Jersey. Why doesn't counsel give me
10 a call and I'll discuss it. Let me consider whether we'll
11 oppose that motion as long as his involvement is restricted
12 to the path in New Jersey, I would have no -- whatever that
13 means, I would have -- I would want to consider our attitude
14 towards that.

15 MR. WEBER: Your Honor, there's nothing in the HDO
16 which limits any of the parties' participation to any of the
17 particular applications. I mean, even the Cablevision of
18 New York City - Phase I has no limitations put on it as to
19 did the one path in the Bronx. There's nothing in the HDO
20 limiting any of the parties' participation. And if Liberty
21 is going to be trying to start limiting parties'
22 participation, the Bureau will fight that.

23 MR. HOLT: Again, Your Honor, that's precisely why
24 the motion was made this morning, because we anticipated
25 that Liberty was going to take this position and try to

1 limit participation by parties which we don't think is
2 proper. The issues here are whether, you know, are well
3 spelled out in the HDO and as Bureau counsel pointed out,
4 there aren't any limitations placed on the parties'
5 participation. This issue has evolved into a bigger issue
6 than --

7 JUDGE SIPPEL: Well, that's -- I've said what I'm
8 going to say about it. But I just want it to be as
9 simplistic as it may appear. I'd like it to be very clean.

10 MR. HOLT: Yes, Your Honor.

11 JUDGE SIPPEL: Right from the beginning.

12 MR. HOLT: Thank you.

13 JUDGE SIPPEL: Okay. Now, does anybody else have
14 anything more they want to say about anything that's of a
15 preliminary nature other than what's -- okay. Let me move
16 onto what I have put together here. As I say, I've gone
17 down pretty much and given you everything that you've asked
18 for in the joint report. By March 26, the limited
19 interrogatories, they are authorized to be served and to the
20 extent feasible the Bureau, Time Warner and Cablevision will
21 jointly submit the interrogatories to be served on Liberty.
22 Now, Liberty, of course, also on March 26th, Liberty has the
23 right to do the same thing.

24 MR. BEGLEITER: I believe it says by April 3rd.

25 JUDGE SIPPEL: Well, no. I'm changing that. I'm

1 changing. I mean, I'm saying in substance I'm giving you
2 what's in the report, but I'm moving the dates a little bit
3 around.

4 MR. BEGLEITER: Your Honor, that's today.

5 JUDGE SIPPEL: Well, that's the date that you gave
6 me. I don't know. I thought maybe the interrogatories were
7 ready to go.

8 MR. BEGLEITER: The date that we agreed to among
9 the parties was April 3rd.

10 JUDGE SIPPEL: Oh, I'm sorry. It was April 3rd
11 for --

12 MR. BEGLEITER: For Liberty.

13 JUDGE SIPPEL: For Liberty. Oh, you need more
14 time.

15 MR. BEGLEITER: Right. We just, we need more time,
16 Your Honor.

17 JUDGE SIPPEL: Well, how much more time? I'd like
18 you all to start off at the same time.

19 MR. BEGLEITER: Well, April 3rd is really the
20 earliest, Your Honor. The partner working with me is on
21 vacation this week. I have other demands this week and I
22 just need to April 3rd to get the papers out.

23 JUDGE SIPPEL: All right. Well, I'd like to have
24 you all working on the same timeframe. That's all. I think
25 it's going to save confusion. Everybody's looking at the

1 same target date instead of just a couple days difference.
2 Is that going to impact significantly your discovery if we
3 move this date up to April 3rd instead of March 26th. I'm
4 assuming you're ready to go.

5 MR. HARDING: We agreed to that in the joint
6 report, Your Honor. So that's fine with us.

7 MR. BECKNER: That's fine.

8 JUDGE SIPPEL: All right. Then we'll change that
9 to April 3rd. And what I'm saying is that limited
10 interrogatories are authorized across the board with the
11 understanding that there will be collaboration if I can use
12 that term so that you're not being, so that Liberty's not
13 being hit with separate requests or interrogatories. And
14 that's going to be April 1st. April 3rd, I'm sorry.

15 MR. WEBER: Your Honor, there may be a slight need
16 for separate ones from the Bureau and from Time Warner to be
17 served on Liberty. Right now we are speaking and trying to
18 get a single set of interrogatories. However, we have just
19 slight differences of opinion on one particular issue and
20 Liberty may want or rather Time Warner may want to file
21 their own limited interrogatories on that particular issue.

22 JUDGE SIPPEL: All right. Well, my order's going
23 to read that as you've given me the language really to the
24 extent feasible the Bureau, you know, all the parties will
25 do that. So if you can't, you can't. But you give it

1 a -- you give it a good try. All right. Then I've got the
2 production requests. Is it feasible to do the document
3 production requests on the same date? I'm sorry, you still
4 have --

5 MR. KEAM: Your Honor, could you just clarify your
6 dates one more time?

7 JUDGE SIPPEL: April the 3rd. Instead of March
8 26th, we'll start April the 3rd.

9 MR. KEAM: April 3rd for everybody.

10 JUDGE SIPPEL: For everybody, exactly. Now, as I
11 say I'm changing these dates a big as I go down my list.
12 But can we do the documents the same time? That is April 3,
13 the document production request would be served on all
14 parties? Is that okay there?

15 MR. BEGLEITER: Your Honor, I guess the much of
16 the, most of the production was going to come from us. And
17 this was done so that we would have some, you know, we'd
18 get, we would get it now and we would be able to respond by
19 the fifth -- be able to produce the -- respond to the
20 interrogatories by the 10th and document production by the
21 15th if document production was requested by April 1. I
22 would just, if there's going to be an alteration of dates
23 that the other parties are going to be submitting their
24 limited interrogatories and document production. I would
25 ask that the same periods for responses be, that we had

1 agreed to would be maintained.

2 JUDGE SIPPEL: Yeah. Yes. I'll go down --

3 MR. BEGLEITER: Thank you.

4 JUDGE SIPPEL: I'll do my best to make those
5 calculations and you help me if I'm off.

6 MR. BEGLEITER: Okay. Thank you, Your Honor.

7 JUDGE SIPPEL: I've got a calendar and I've got I
8 think enough fingers to do this. So if we do April 3rd for
9 interrogatories and documents and that gets everything off
10 on the same date is that -- anybody have any problem with
11 that? As long as it's just getting the requests out. Okay.
12 Now, we had April the 10th and since we're going, let's see.
13 Can we add three days to April the 10th? That would bring
14 it how about to the 15th? Now, if we brought, if we -- so
15 the response to interrogatories would be on April 15th which
16 is a Monday. And the documents --

17 MR. PETTIT: I'm sorry, Your Honor, what date was
18 that?

19 JUDGE SIPPEL: The 15th of April. Tax day also I'm
20 sorry to say. I don't mind going to the 16th if that's
21 going to -- if anything, I mean, a day or so one way or the
22 other doesn't make any difference to me. But the documents
23 to be produced would also be produced on the 15th unless
24 again you want an extra day. The documents are a little bit
25 more cumbersome and you want an extra day.

1 MR. BEGLEITER: The only thing we would ask for,
2 Your Honor, and frankly it was turned down by the other
3 side, is that we be able to express overnight mail on the
4 15th so that we'd have the work, we'd do most of the
5 production in New York so we could overnight it on the 15th
6 and get it on the 16th.

7 JUDGE SIPPEL: Well, why don't we do it on the
8 16th?

9 MR. BEGLEITER: That's fine, Your Honor.

10 JUDGE SIPPEL: Okay. So that way you'll have, so
11 you won't be doing, you won't have to worry about answers to
12 interrogatories and documents on the same day. You'll at
13 least do them on different days.

14 MR. KEAM: Your Honor, for your clarification.

15 JUDGE SIPPEL: Yes.

16 MR. KEAM: Response to interrogatories is still due
17 on the 15th?

18 JUDGE SIPPEL: Yes.

19 MR. KEAM: However, the production of documents are
20 due on the 16th.

21 JUDGE SIPPEL: The 16th, exactly, exactly. Under
22 the same, under the instructions that you've agreed to.
23 April the 26th, deposition notices to be served. I think I
24 changed that date. I think I moved that from the 29th to
25 the 26th. But that would give you ten days to get the

1 notices out. And that gives people more time to get
2 prepared. And then May 6th the deposition is to commence
3 and I've got, in my order I would have them ordered to be
4 done, to take place in Washington, D.C. And the reason is
5 because of the fact that first of all, all the counselors
6 assembled here in Washington, D.C., it's going to be easier
7 for all counsel.

8 MR. PETTIT: Except one, Your Honor.

9 JUDGE SIPPEL: With the exception of one, yes sir.

10 MR. PETTIT: Actually several.

11 JUDGE SIPPEL: All right. That's a factor.

12 MR. BEGLEITER: Your Honor, we said we would
13 consider it. And we'll consider it. We're not going to be
14 obstructionists. There may be some people who will have a
15 good sufficient reason to do it in New York and we'll ask
16 that it be done in New York. But we, we, we agree that we
17 would at about the time of the notices that we would discuss
18 again the venue for the depositions.

19 JUDGE SIPPEL: Mr. Holt.

20 MR. HOLT: Your Honor, I would suggest that to have
21 an element of certainty here that you instruct that
22 depositions be taken in Washington subject to a reasonable
23 request by counsel that a particular deposition be taken in
24 New York.

25 JUDGE SIPPEL: Well, there are protective order

1 procedures which can be implemented if somebody has a real
2 good reason. I have a -- I have an additional, there's an
3 additional factor here. As I say, in light of the fact that
4 we are on a, I mean, I think we can do this, but we are on a
5 relatively tight schedule here. If there's any question
6 about a deposition, I'd rather be here. I'd like to have
7 the opportunity to have the witness brought right in here if
8 there's going to be some kind of a problem rather than
9 trying to do it over the telephone.

10 MR. HOLT: And additionally, Your Honor, I
11 believe --

12 JUDGE SIPPEL: For my supervision of the deposition
13 in other words.

14 MR. BEGLEITER: Your Honor.

15 JUDGE SIPPEL: Go ahead.

16 MR. BEGLEITER: I understand that, Your Honor.
17 There's just a couple of things that I'd want to point out.

18 JUDGE SIPPEL: Yes.

19 MR. BEGLEITER: It's premature because I don't know
20 what the situation's going to be. If we have third party
21 witnesses, people that are not, that are not, that are not
22 associated with Liberty or Time Warner or Cablevision or the
23 FCC, it would be difficult to get them to agree to come down
24 to Washington. They're likely to be in New York. And that
25 that's something that we've got to consider.

1 Secondly, and I don't think there's any legal right
2 to compel them to come to Washington. I look at the Federal
3 Rules that I believe apply here. If there are third
4 parties, and again it's premature because I'm not sure there
5 are going to be. But if there are third parties, I think
6 they have a right to be deposed in the county of their
7 residence or their business. Having said that --

8 JUDGE SIPPEL: If they're given a plane ticket and
9 a day's travel, I'm not so sure.

10 MR. BEGLEITER: Well, they may. I don't know how
11 long -- again, it's premature. I don't know how long the
12 deposition is going to take. I don't know what, I don't
13 know what their feelings are going to be about leaving their
14 home town. That's why I'm reluctant to agree to that.
15 That's one of the reasons I'm reluctant to agree to that.

16 Secondly, I don't know who many depositions and who
17 is going to be deposed. And I don't know how disruptive
18 it's going to be to the company. So we're trying to be
19 reasonable and say that we get the list, we know who it's
20 going to be, let's see what we can do. I mean, I think
21 that's the proper way to proceed.

22 JUDGE SIPPEL: Mr. Holt. Mr. Weber, go ahead.

23 MR. WEBER: The Bureau as you know, and as the
24 parties in the room probably know, is still -- or the entire
25 Commission is still operating without a fiscal budget for

1 this year. This makes it very difficult for us to arrange
2 any travel. As it has been, really all travel has been
3 suspended within the bureau.

4 And therefore, if there are going to be depositions
5 in New York, they most likely will be done without Bureau
6 counsel present. And I think if Liberty is going to be
7 trying to make its case and trying to get the Bureau
8 eventually on its side, it's on a very perilous track if
9 it's going to be insisting on having New York depositions
10 without Bureau counsel present for those depositions.

11 JUDGE SIPPEL: Well, there's another factor. What
12 I'm to do, I'm going to tell you what I'm going to do. I'm
13 going to set these depositions down for Washington, D.C. and
14 you rely on the rules that for protective orders if you've
15 got a witness that's in some kind of a terminal condition or
16 something and can't make the trip and you've got a reason as
17 to why.

18 But if it's just a question of somebody they don't
19 like Washington or they want it done in New York because
20 they have something they want to do in the afternoon, I
21 mean, Mr. Weber's right. The Commission wants this case
22 resolved quickly and expeditiously and I don't know how we
23 can do it if we're going to have people running around the
24 country. And God knows how the budget situation's going to
25 look like.

1 MR. BEGLEITER: Your Honor, if I could just say two
2 things.

3 JUDGE SIPPEL: Yes, go ahead.

4 MR. BEGLEITER: First of all, you know, I -- I
5 think at least the Federal Rules of Civil Procedure do give
6 third parties that right to just say we don't want to travel
7 outside of our area. They can go within 100 miles. There
8 are specific rules about where they can be subpoenaed. But
9 they say that those type parties have the right to say I'm
10 not going to leave my home territory.

11 So I don't think it's as simple as saying they
12 don't want to come to Washington. They may, they may,
13 whoever they are, there may not be any. Whoever they are
14 may say, yeah, I don't want to do that. I think that has to
15 be respected.

16 Number two, I was hoping, you know, that -- I don't
17 know which side the Bureau's on. I was hoping -- we made a
18 reasonable request yesterday about something that was
19 frankly what I thought was -- without getting into that.
20 But I would expect that if we're expected to be reasonable,
21 there would be reasonableness on the Bureau's side as well.
22 And if we can work out that kind of arrangement, we will try
23 our best. We have I think by the party that's at issue here
24 by agreeing to this, showing some good faith and some
25 reasonableness on our part.

1 JUDGE SIPPEL: Mr. Holt.

2 MR. HOLT: Your Honor, from Cablevision's
3 perspective, your ruling makes entirely good sense. What
4 Mr. Begleiter is it appears to be third parties which I
5 suppose by definition are within Liberty's control. So if a
6 subpoena is necessary for those parties and ultimately
7 depositions have to be taken for those parties or persons I
8 should say, so be it. But as far as persons within the
9 control of the parties to this proceeding, Cablevision
10 agrees that it's reasonable to have depositions held in
11 Washington and that your ruling has an element of certainty
12 that will remove any potential gamesmanship down the road
13 when the parties are trying to figure out deposition
14 schedules.

15 JUDGE SIPPEL: Yes, Mr. Begleiter, I understand
16 what you're saying. I'm not, listen. I think that Liberty
17 has been leaned heavier than anybody else this morning.
18 Your Honor, I agree that there should be fairness around the
19 table in terms of cooperation.

20 So there may be another day when you're looking for
21 something and I'll remember this. But I am being very firm
22 about this. I know that this, I know that your control over
23 non parties is not the same as control over your own
24 employees.

25 But I am expecting you or your parties or your

1 clients to tell these people that if there are such people
2 that there are a lot of serious considerations here with
3 respect to Liberty. It's in your interest, it's in
4 Liberty's interest to have this, all of this compiled as
5 quickly as possible which is basically what we're doing.

6 MR. BEGLEITER: I agree.

7 JUDGE SIPPEL: And we are, I mean, this Commission
8 is, I mean, it's a fact of life. We are constrained in
9 terms of what we can do budget-wise. It's a fact of life.

10 MR. BEGLEITER: Your Honor, I indicated the very
11 first time that I would take under advisement that if we saw
12 the list we would be reasonable. If, for example, it's a
13 deposition of a large number of Liberty employees, maybe
14 some we don't think are necessary, that are, but it's a
15 large number and that would cause a disruption to the
16 company, we'll make that point known to Your Honor. All I'm
17 saying is that we get the list. We will tell you which ones
18 we agree to come to Washington and I hope it's going to be
19 all of them. Which ones we feel we can't because of other
20 constraints. That's all. I'm not making a hard and fast
21 rule.

22 JUDGE SIPPEL: I'm just trying to be sure that you
23 have some additional reasons so that you can be that much
24 more persuasive. That's all. Just trying to help you,
25 okay?

1 MR. BEGLEITER: I appreciate the assistance.

2 JUDGE SIPPEL: On stipulations, yes. Just as
3 you've indicated I want a report on the status of the
4 efforts. You all have committed to making good faith
5 efforts to try and come up with stipulated facts. I'm
6 saying I want to report on the status of those efforts by
7 the 17th of May. Or, of course, if you've got extra copies
8 of the stipulations, you don't need a report. But I want to
9 know in writing how things are going along those lines by
10 the 17th of May.

11 MR. BEGLEITER: These are factual stipulations,
12 Your Honor.

13 JUDGE SIPPEL: Yes, I've taken virtually the
14 language that was in the report.

15 MR. BEGLEITER: Okay.

16 JUDGE SIPPEL: Yes, with respect to the document
17 filed. Your Honor, these are all official documents. The
18 copies are going to come without need for certification. Of
19 course, there will be privilege and evidentiary objections
20 that will be available if they're relevant.

21 Depositions. I've given you basically what you put
22 down. The same thing with respect to the pleadings and the
23 services and service of pleadings, written testimony. I am
24 encouraging you all to use the written testimony approach
25 with cross examination, witnesses being here for cross

1 examination.

2 There's going to be a lot of documents. I mean, we
3 may have a -- we probably will have another pre-hearing
4 conference before we go to hearing on this. It may be
5 appropriate to set the first day of hearing down for an
6 admissions session or schedule an admission session if it's
7 really going to be voluminous documents. It's hard for me
8 to tell right now.

9 But then if that was the case, they'd be expected
10 to have a witness. If it's going to be contested documents,
11 that there be a sponsoring witness in the courtroom so that
12 questions can be asked of the sponsoring witness with
13 respect to the documents. But I'm not going to schedule
14 anything other than what I've already scheduled. So the
15 hearing date still stands as the 25th of June to commence
16 here in Washington at 10:00 a.m.

17 MR. HARDING: Your Honor, your pre-hearing order
18 notes that discovery's to be completed by May 24th. And we
19 think it's important to have that window in order to
20 schedule and to make sure that it all can be done in a
21 coordinated fashion. In which case, we would suggest that
22 perhaps the stipulation status report should come in about a
23 week after discovery closes so that everyone can sit through
24 the record and make some reasonable determinations on what
25 kind of stipulations might be appropriate.

1 JUDGE SIPPEL: Well, I don't have any problem with
2 that. And I in my own internal thinking on this I was back
3 and forth on this. But I was thinking that, well, if I give
4 you the 17th, it will make you start thinking about it. And
5 at least you can tell me where you're going in those
6 directions. Because if there's a problem, I want to know
7 about it ahead of time.

8 The status report can simply say that, you know,
9 discovery's gone along very well. It's well along and
10 you're still talking about stipulations and you'd like to
11 report at a future date. But I'm going to leave it the way
12 it is for now. But again, that's what I want to really find
13 out rather than calling everybody in here and asking them
14 what's going on. Just tell me in writing what's going on
15 and I can get a feel as to whether or not you might need
16 some assistance.

17 MR. BEGLEITER: Can I raise the one and only
18 discovery point that Liberty's going to have this morning?

19 JUDGE SIPPEL: Mr. Begleiter.

20 MR. BEGLEITER: Yeah.

21 JUDGE SIPPEL: Right. Go ahead.

22 MR. BEGLEITER: I would like to, we understand.
23 We've read the rules in the CFR regarding discovery against
24 the Commission. And we know that we are precluded from
25 depositions against the Commission and we're also precluded